

this part. A grantee may retain repayments, interest, and other return on investment of HOME funds that are made after grant closeout if the grantee agrees to use the funds for eligible activities.

(c) HUD will recapture HOME funds that are not expended within five years after the last day of the month in which it obligated the funds.

(d) *Termination before completion.* If a project is terminated before its completion, whether voluntarily by the grantee or otherwise, an amount equal to the HOME funds disbursed for the project must be paid by the grantee to its HOME account. If the HOME funds were disbursed by HUD, the amount must be paid to HUD; if the HOME funds were disbursed from the grantee's account, the amount must be paid to the grantee's account. If the amount is not repaid, the grantee will be subject to actions under § 954.600 *Performance reviews*, § 954.601 *Corrective and remedial actions*, and § 954.602 *Notice and opportunity for hearing; sanctions*.

§ 954.501 Grantee responsibilities; written agreements; monitoring.

(a) *Responsibilities.* The grantee is responsible for ensuring that HOME funds are used in accordance with all program requirements. The use of subgrantees and contractors does not relieve the grantee of this responsibility.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity (e.g., for-profit housing developer, nonprofit organization, homeowner, or IHA) the grantee must enter into a written agreement with the entity ensuring compliance with the requirements of this part. A subgrantee and a contractor must also enter into a written agreement before it disburses funds to any entity. The agreement remains in effect during the period for affordability under § 954.306 or § 954.307, as applicable, or if the entity is a subgrantee, during any period that the entity has control over HOME funds.

(c) *Provisions in written agreement.* At a minimum, the written agreement must include applicable provisions concerning the following items:

(1) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be

performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the grantee effectively to monitor performance under the agreement.

(2) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 954.306 or § 954.307, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(3) *Repayments.* If the entity is a subgrantee, the agreement must state if repayment, interest, and other return on the investment of HOME funds are to be remitted to the grantee or are to be retained for additional eligible activities by the entity.

(4) *Uniform administrative requirements.* If the entity is a subgrantee, the agreement must require the entity to comply with applicable uniform administrative requirements, as described in § 954.502.

(5) *Project requirements.* The agreement must require compliance with project requirements in § 954.400 through § 954.402 of this part, as applicable in accordance with the type of project assisted.

(6) *Housing quality standard.* The agreement must require owners of rental housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement.

(7) *Other program requirements.* The agreement must require the entity to carry out each activity in compliance with all Federal laws and regulations described in § 954.4.

(8) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 954.301 for the use of HOME funds by religious organizations.

(9) *Requests for disbursements of funds.* The agreement must specify that the entity may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(10) *Reversion of assets.* If the entity is a subgrantee, the agreement must specify that upon expiration of the agreement, the entity must transfer to the grantee any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(11) *Records and reports.* The agreement must specify the particular records that must be maintained and any information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(12) *Enforcement of the agreement.* The agreement must provide for a means of enforcement by the grantee or the intended beneficiaries. In addition, the agreement must specify remedies for breach of the provisions of the agreement. If the entity is a subgrantee, the agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the entity materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44.

(13) *Duration of the agreement.* The agreement must specify that the agreement is in effect for the period of affordability required by the grantee under § 954.306 or § 954.307.

(d) *Monitoring.* The grantee is responsible for managing the day-to-day operations of its HOME program, for monitoring the performance of all entities receiving HOME funds from the grantee to assure compliance with the requirements of this part, and for taking appropriate action when performance problems arise.

(1) Not less than annually, the grantee must review the activities of owners of rental housing assisted with HOME funds to assess compliance with the requirement of this part, as set forth in the written agreement under paragraphs (b) and (c) of this section. For multifamily housing, each review must include on-site inspection to determine compliance with housing codes and the requirements of this part. For rental housing containing one- to four-dwelling units, an on-site review must be made once within each two-year period. The results of each review must

be included in the grantee's performance report.

(2) Not less than annually, the grantee must review the performance of each contractor and subgrantee.

§ 954.502 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the grantee and any governmental subgrantee receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.21, 85.22, 85.26, 85.32, 85.33, 85.35, 85.36, 85.43, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A-122 (available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503; Telephone, (202) 395-7332) and the following requirements of 24 CFR part 84 apply to subgrantees receiving HOME funds that are private nonprofit organizations: §§ 84.12, 84.22, 84.23, 84.25, 84.51, 84.52, and 84.71.

(c) *Alternatives to bonding.* For construction contracts that exceed the amount for small purchase under 24 CFR 85.36, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to HUD in accordance with 24 CFR 85.36(h). Performance and payment bonds for 100 percent of the total contract price are acceptable to HUD. There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the grantee. Alternative methods to provide performance and payment assurance may include:

(1) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(2) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.